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Public Prosecutor v Richard Chia Kok Hiong

HIGH COURT (BRUNEI DARUSSALAM) — CRIMINAL TRIAL NO 13 OF 2005

B MOHAMMED SAIED CHIEF JUSTICE AND STEVEN CHONG J

18 NOVEMBER 2006

Criminal Law — Penal Code (Brunei) — Section 302 — Circumstantial evidence —

C *Burden of proof — Possible contamination of exhibits*

Evidence — Circumstantial evidence — Murder — Burden of proof — Whether burden heavier than in case of direct evidence — Significance of DNA evidence — Divergence in opinions of experts — Approach to be taken

D

Evidence — Witness — Statement by — Witness not called as unable to be located — Requirements to be complied with before a statement is admissible — Evidence Act s 32(1)(i)

E

On 17 December 2004, a family of three were found dead in their house, brutally murdered. The case for the prosecution was that, it was the defendant who committed the murders and it rested primarily on: (a) the evidence of a witness who

F said, she saw the defendant with what appeared to be bloodstains on his trousers after he had alighted from a car on the night of 15 December 2004; (b) the opinion of a specialist pathologist regarding the time of death of the victims; (c) the results obtained by matching the DNA profile from the fingernail scrapings of the adult victims and the DNA profile of the defendant; and (d) the results of the DNA profile

G from stains found on the car seat and control panel of the door of the driver in the Nissan Sunny alleged to have been used by the defendant. The defence case focused on the credibility and reliability of the eye witness, the issue of time of death and the shortcomings of the DNA evidence. The defence was one of alibi. The prosecution submitted that the circumstantial evidence pointed irresistibly and inexorably to the guilt of the defendant.

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Held, acquitting the accused of murder:

(1) It was of critical importance to examine that body of evidence carefully to

I determine its reliability. Equally important was the need for stringent measures to be adopted to safeguard the integrity of exhibits when they were collected, handled and stored prior to the items reaching the laboratory (see paras 82–83).

(2) In the instant case, the police officers involved in the investigations had little appreciation of the risks of contamination and no protocols existed in the collection, handling and storage of exhibits from the crime scene. There was evidence from Corporal Hosaine that he did not bring enough labels along with him and therefore the same labels were reused at various locations at the scene and exhibits collected from the crime scene were placed in envelopes which were not sealed and put in boxes. The doctor who did the post mortem said that, close to 30 police officers went in and out of the victims' house while he was present and there did not appear to be any control of access to the crime scene. No record was kept of the movement of exhibits into and out of the exhibit store where they were kept. Corporal Hosaine said he could not remember how many times the exhibits were viewed by police officers prior to examination by the Singapore laboratory (see paras 84–85 & 87).

(3) The opinions of the experts in regard to several material issues, such as the time of death of the victims, likelihood of transfer of the defendant's DNA to the victims' fingernail scrapings from merely shaking hands as opposed to forceful fingertip contact like gripping or scratching, and possible contamination of the car seat cover and door control panel of the Nissan Sunny by the transfer of dry blood rather than wet blood, were divided. The divergence in the views of the experts reflected the innate complexity of the issues involved and none of them was able to say that the opinion proffered by the other could be ruled out definitively. In the circumstances any doubt in the issues alluded to earlier must be resolved in the defendant's favour (see paras 95 & 98).

(4) Turning to the evidence of Faridah, there were serious concerns about the reliability of her account of what she saw on the night of 15 December 2004. Having said in evidence in-chief that the man she observed coming out of the Nissan Sunny was the defendant, she conceded in cross-examination that she had assumed it was him because of the car. The police statement of such an important witness was only recorded over three weeks after she had made a report. Her evidence could not be reconciled with that of Haliza who told the police she heard a scream which she believed was from one of the victims on the morning of 16 December 2004 (see paras 99–101).

[Bahasa Malaysia summary

Pada 17 Disember 2004, tiga orang sekeluarga dijumpai mati di rumah mereka, yang dibunuh secara kejam. Kes pendakwaan ialah defendan melakukan pembunuhan tersebut dan bergantung terutamanya ke atas: (a) keterangan seorang saksi yang menyatakan bahawa, beliau nampak apa yang kelihatan seperti kesan darah di seluar defendan apabila defendan keluar daripada kereta pada malam 15 Disember 2004; (b) pendapat pakar patologi berhubung dengan masa kematian mangsa-mangsa; (c) keputusan-keputusan yang diperolehi dengan memadankan profil DNA dari serpihan yang diambil daripada kuku mangsa-mangsa dewasa dan profil DNA defendan; dan (d) keputusan profil DNA daripada kesan-kesan yang dijumpai di tempat duduk kereta dan di panel kawalan pintu pemandu Nisan Sunny yang dikatakan telah digunakan oleh defendan. Kes pembelaan bertumpu kepada kebolehpercayaan dan ketepatan saksi yang menyaksikan sesuatu kejadian, isu masa

kematian dan kekurangan-kekurangan bukti DNA. Pembelaan adalah bertumpu kepada alibi. Pendakwa raya berhujah bahawa keterangan ikut keadaan jelas menunjukkan kesalahan defendan.

Diputuskan, membebaskan tertuduh kerana membunuh:

(1) Ia adalah penting untuk meneliti keseluruhan keterangan untuk menentukan ketepatannya. Juga penting untuk mengambil langkah-langkah yang ketat untuk melindungi integriti ekshibit-ekshibit apabila mereka diambil, dikendalikan dan disimpan sebelum sampai ke makmal (lihat perenggan 82–83).

(2) Dalam kes ini pegawai-pegawai polis yang terlibat dalam siasatan tidak menghargai risiko pencemaran dan tiada protokol yang sedia ada dalam pengambilan, pengendalian dan penyimpanan ekshibit-ekshibit yang diambil daripada tempat kejadian jenayah tersebut. Terdapat keterangan daripada Koporal Hosaine bahawa beliau tidak mengambil label-label yang mencukupi bersamanya dan dengan itu terpaksa menggunakan label-label yang digunakan semula di beberapa lokasi di tempat kejadian tersebut dan ekshibit-ekshibit yang dikumpulkan daripada tempat kejadian diletak ke dalam sampul surat yang tidak ditutup dan diletak di dalam kotak-kotak. Doktor yang menjalankan post mortem menyatakan bahawa lebih kurang 30 pegawai-pegawai polis yang keluar masuk rumah mangsa semasa beliau berada di situ dan nampaknya tiada apa-apa kawalan terhadap kemasukan ke tempat kejadian jenayah tersebut. Tiada rekod yang disimpan berhubung dengan pergerakan ekshibit-ekshibit ke dalam dan keluar bilik ekshibit di mana ia disimpan. Koporal Hosaine menyatakan ia tidak ingat berapa kali ekshibit-ekshibit dilihat oleh pegawai-pegawai polis sebelum pemeriksaan makmal di Singapura (lihat perenggan 84–85 & 87).

(3) Pendapat pakar-pakar berhubung dengan beberapa isu-isu yang penting, seperti masa kematian mangsa-mangsa, kemungkinan pemindahan DNA defendan ke serpihan yang diambil daripada kuku mangsa-mangsa dengan hanya berjabat tangan dan tidak perlu sentuhan jari yang kuat seperti mencengkam atau mencalar, dan kemungkinan pencemaran tempat duduk kereta dan pintu panel kawalan Nissan Sunny melalui pemindahan darah yang kering dan bukan darah yang masih basah, adalah berbelah bagi. Perbezaan pandangan-pandangan pakar-pakar menunjukkan kerumitan semula jadi isu-isu terlibat dan tiada seorang daripada mereka dapat menyatakan bahawa pendapat yang diberikan oleh yang lain dapat dipatahkan secara muktamad. Dalam keadaan-keadaan ini sebarang keraguan isu-isu yang dibangkitkan mesti diselesaikan menyebelahi defendan (lihat perenggan 95 & 98).

(4) Merujuk kepada keterangan Faridah, terdapat persoalan yang serius terhadap ketepatan ceritanya atas apa yang dilihat olehnya pada malam 15 Disember 2004. Setelah memberikan keterangan utama bahawa lelaki yang dilihatnya keluar daripada Nissan Sunny adalah defendan, beliau bersetuju ketika disoal balas bahawa beliau menganggap ia adalah lelaki tersebut disebabkan oleh kereta tersebut. Pernyataan polis terhadap saksi penting sebegini hanya diambil selepas tiga minggu selepas beliau membuat laporan. Keterangannya tidak

dapat menyelaraskan dengan keterangan Haliza yang memberitahu polis bahawa beliau terdengar jeritan yang dipercayainya daripada salah seorang mangsa pada pagi 16 Disember 2004 (lihat perenggan 99–101).]

Notes

For a case on witness, statement by …, see 7(2) *Mallal's Digest* (4th Ed, 2006 Reissue) para 2825.
For cases on circumstantial evidence, murder, see 7(1) *Mallal's Digest* (4th Ed, 2006 Reissue) paras 632–633.
For cases on Penal Code (Brunei) s 302, see 4 *Mallal's Digest* (4th Ed, 2003 Reissue) paras 1131–1132.

Cases referred to

Jayaraman & Ors v PP 2 MLJ 306 (refd)
McGreevy v Director of Public Prosecutions [1973] 1 All ER 503 (refd)
Pringle v R (Jamaica) [2003] UKPC 9 (refd)
PP v Kapli bin Masri [1990] JCBD 216 (refd)
PP v Mohamad Fairus bin Omar [1997] 5 MLJ 57 (refd)
R v Doheny, R v Adams [1997] 1 Cr App Rep 369 (refd)
R v Sodo [1975] 61 Cr App R 131 (refd)

Legislation referred to

Evidence Act s 32(1) [Brunei]
Evidence Act 1950 s 32(1)(i), (j)
Penal Code s 302 [Brunei]

Yusree Hj Junaidi (Pg Jasmine PLKR Pg Hj Bahrain with him) (Deputy Public Prosecutors) for the Prosecution.
Yusof Halim (Siva Sankaran with him) (Cheok Sankaran Halim) for the defendant.

Steven Chong J:

[1] On the afternoon of 17 December 2004 Maual bin Jambu (Maual), his wife Seniwati bte Untong (Seniwati) and their daughter Neena Ashiira bte Aziz (Neena) were found dead in their home at house C3, Science College, Kampong Serusop.

[2] Nearly two months later, on 7 February 2005, Richard Chia Kok Hiong ('the defendant') was brought before the magistrate's court and charged with the murder of the three victims contrary to s 302 of the Penal Code. The three counts allege the commission of the acts of murder between 6.22pm on the 15 December 2004 and about 2am on the 16 December 2004.

PROSECUTION CASE

[3] There is no dispute in this case that Maual and his wife together with their daughter were brutally murdered. The case for the prosecution is that it was the defendant who committed the murders and it rests primarily on: (a) the evidence of a witness who said she saw the defendant with what appeared to be bloodstains on

his trousers after he had alighted from a car (the Nissan Sunny) belonging to his wife at the parking bay below his flat on the night of 15 December 2004; (b) the opinion of a specialist pathologist regarding the time of death of the victims; (c) the results obtained by matching the DNA profile from the fingernail scrapings of the adult victims and the DNA profile of the defendant; and (d) the results of the DNA profile from stains found on the car seat and control panel of the door of the driver in the Nissan Sunny alleged to have been used by the defendant.

[4] Naturally, the defence case focused on the credibility and reliability of the eye witness, the issue of time of death and the shortcomings of the DNA evidence. The defence is one of alibi.

DISCOVERY OF THE BODIES

[5] Sofian bin Hj Mahmud (Sofian) and his wife Haliza bte Hj Abd Hadi ('Haliza') live at house B2 which is next to the victims' house C3. On 17 December 2004 at about midday, as they were going pass C3 in their car Haliza saw what appeared to be the leg of someone in the garage of the house. On closer inspection Sofian discovered his neighbour Maual lying in a pool of blood on the garage floor and immediately called the police.

[6] A party of five police officers from Berakas Police Station reached C3 at 12.50pm. One of them, WPC 475 Cashuarina @ Nor Quamarina bte Hj Abd Manaf, gave evidence that having seen the body of Maual in the garage, she and another officer entered the house through the 'middle door' which was not locked. She said she saw Neena's body on the floor in the living room and Seniwati's body on the floor in the master bedroom.

[7] About one hour later members of the Special Investigation Unit ('SIU') led by Assistant Superintendent Sabtu bin Adi ('ASP Sabtu') arrived at the scene. This was shortly followed by the arrival of Dr Pemesari Upali Telesinghe ('Dr Telesinghe'), a specialist pathologist from RIP AS Hospital, members of the Police Fingerprint Unit, and officers of the Berakas Criminal Investigation Department who were tasked with searching for the murder weapon.

[8] ASP Sabtu assigned Corporal 1397 Hosaine bin Hj Jasis ('Corporal Hosaine') and Police Constable Mohd Alimin bin Hj Aliakbar to collect exhibits from the scene. An extensive search was carried out in the house and outside it. Corporal Hosaine prepared a list of exhibits after photographs were taken of them. We do not propose to enumerate the list of exhibits. There were a large number of items collected and some of these were eventually taken to Singapore for DNA analysis.

CAUSE OF DEATH

[9] Dr Telesinghe conducted the post-mortem of the three victims on 18 December 2004 and prepared three reports. There were 49 injuries inflicted on

the head, body and limbs of Maual who was aged 44. He died from cranio-cerebral injuries. Dr Telesinghe opined that Maual had been assaulted with a blunt weapon and was the victim of a 'frenzied attack'.

[10] Seniwati, who was 37 years old, had 25 injuries and they were mostly on her head, face and neck. These injuries, according to Dr Telesinghe, were similarly caused by assault with a blunt weapon. She died from asphyxia following strangulation.

[11] There were only three visible injuries found on three year old Neena, abrasions on her nose and left ankle and contusion on her lips. She had been smothered to death.

TIME OF DEATH

[12] The finding of Dr Telesinghe concerning the cause of death of the victims is uncontroversial. However, his opinion as to the time of death was strongly challenged by the defence. It was the opinion of Dr Telesinghe that it was probable that all three victims had died 36 to 48 hours before his examination at the scene: between 15 December 2004 at 2pm to 16 December 2004 at 2am. As will be apparent later, this time frame is pivotal to the case of the prosecution against the defendant.

[13] Dr Telesinghe said the time of death could be 'roughly estimated' by examining the changes of the body after death and went on to describe what he observed. We do not think it is necessary to go into the details of his observations although much time was spent by defence counsel on this issue, for he was quick to emphasise that there is no exact test in forensic science giving the exact time of death; and more importantly, he readily agreed that the opinions concerning the time of death in the reports of the proposed expert witnesses for the defence. Dr Charles Naylor and Dr Ong Beng Beng, could not be ruled out.

EVENTS LEADING TO 17 DECEMBER

[14] First, there was evidence from Sofian that he last saw Maual on 12 December 2004 unloading things from his car and bringing them into the house. In cross-examination he conceded he could be mistaken about the date. Sofian also said he saw Seniwati on the morning of 14 December 2004 taking in clothes from the clothes-line outside the house.

[15] Second, it was the evidence of Haliza that she saw Maual on the morning of 15 December 2004 washing his car. Then a man arrived in a silver Nissan Cefiro and Maual left the house in this car. Haliza also gave evidence that she had made a police statement on 5 January 2005 stating that whilst she was in the toilet attached to the bedroom in her house, on the morning of 16 December 2004 between 9.30 am to 10 am, she heard a female scream which 'sounded like thunder as if in pain' from Maual's house. She believed that the scream was from Seniwati.

[16] Both Sofian and Haliza said that on 16 December 2004 at about 8pm, upon returning home, they noticed that Maual's house was in darkness. Normally, at that time the lights in the house would be switched on. The couple also recounted that at about noon on 17 December 2004 they saw the visit to Maual's of a black Suzuki Vitara. Haliza said a man in light blue shirt got out of the vehicle, went into the garage and then entered the house through the kitchen door. After about five minutes the man came out of the house and drove off.

[17] Third, Solehun Bin Hj Zambari (Solehun) who lived at house Cl near Maual's house, testified that on 15 December 2004 between 5pm to 6pm whilst he was watering the garden he saw Maual, his wife and daughter driving pass in their Mitsubishi Pajero. Solehun agreed, however, that in the two police statements which he made on 17 December 2004 and 14 March 2005, he stated he saw Maual and his family in the Mitsubishi Pajero on 16 December 2004. Indeed, in his second statement he was asked by the police whether he was sure he saw Maual and his family on 16 December 2004 and he answered in the affirmative; and when it was suggested to him that he saw them on 15 December 2004, he maintained what he had stated earlier.

[18] It is not in dispute that all three vehicles belonging to Maual, including the Mitsubishi Pajero, were at C3 when the victims' bodies were discovered on the afternoon of 17 December 2004. The key to the Mitsubishi Pajero was found by the police in the master bedroom.

[19] Finally, the investigation of ASP Sabtu revealed that the domestic helper of the Maual family, Rhodora Labadan Cajes, had made a phone call to C3 and spoken to one of the victims on 15 December 2004 at 18:22:20.

EVIDENCE OF THE EYEWITNESS

[20] Faridah bte Hj Yahya ('Faridah'), who is a cook, was a resident at flat three on the third floor of Block 2, Science College, which is directly opposite the block of flats where the defendant lived. She revealed that on the evening of 15 December 2004 (her sister's birthday) she visited her parents who live at Kampong Salambigar. Returning home at about 9 pm she showered and did her chores. Later, she went to the verandah of her flat and used her mobile phone to call her friend Shahri.

[21] After her conversation with Shahri she saw the head lights and heard the sound of a car approaching from the direction of the Science College houses. It was a green Nissan Sunny and she had seen the Chinese lady occupying the flat in front of hers using this car. She saw the Nissan Sunny being driven into the parking space below that flat. A silver Nissan Cefiro was parked near to it. The time was about 10.35pm.

[22] The defendant alighted from the Nissan Sunny carrying a stick about a metre long. She had seen him two or three times previously over a period of four years and

recognized him as the neighbour who lived on the first floor of the flat across the road in front of hers. She was sure it was the defendant whom she saw. There was lighting where the Nissan Sunny was parked.

[23] She saw the defendant walking to the Nissan Cefiro and standing beside it momentarily. He wore long trousers 'creamy' in colour but 'red' in the front and did not have a shirt on him. As she was about to switch on her mobile phone she looked down and at the same time the defendant looked up when he moved away from the Nissan Cefiro. She saw his face clearly and he seemed to be looking at her but it was 'not long'. He then turned and walked to the back of the parking area and she lost sight of him for two to three minutes.

[24] When the defendant reappeared beside the Nissan Cefiro still holding the stick Faridah noticed that his trousers no longer had the 'red colour' seen earlier. The defendant stood next to the Nissan Cefiro before moving to the back again.

[25] Finally, she saw the defendant standing beside the Nissan Cefiro once more, and this time he was wearing a pair of black trousers holding the stick in one hand and possibly the trousers he wore earlier in the other hand, before walking to the back. She estimated having observed the defendant for a period of eight to ten minutes altogether.

[26] Subsequently, she heard about the murder of the victims on the news and told her sister and brother-in-law about what she had witnessed on the night of 15 December 2004. She went to Sengkurong Police Station to make a report on 18 December 2004. She gave a total of three written police statements: on 12 January, 6 February and 1 March of 2005.

[27] On 12 February 2005 Faridah also attended a police identification parade to identify the man she saw on the night of 15 December 2004. She picked out the defendant from the line up. Faridah was cross-examined at length about the incident on the night of 15 December 2004 and the upshot of this was that it became apparent she did not actually recognize the man she saw but had decided it must be the defendant after seeing his photograph in the newspaper on the day of his arrest. In re-examination on this issue Faridah explained she had assumed the man was the defendant because he came out of the Nissan Sunny and she surmised he was the husband of the Chinese lady whom she had seen using the car on previous occasions. She agreed in cross-examination that although she had told the police in her statements that she saw blood on the front of the trousers of the man on the night in question, she could not be sure it was blood.

FINGERNAIL SCRAPINGS

[28] The fingernail scrapings of Maual and Seniwati were collected by Dr Telesinghe on the same day when he conducted the post mortem, ie on 18 December 2004. In his written statement of 6 June 2005 he stated he 'taped

down' the fingernail scrapings with cellotape and put them on a piece of paper which was sealed in an envelope before it was handed to the police. He corrected this part of his statement when he gave evidence.

[29] According to Dr Telesinghe he did not tape down the fingernail scrapings. He explained that the fingernail scrapings were collected from each hand using a different toothpick. The fingernail scrapings were then deposited on pieces of filter paper which he folded before giving them to a police officer. He also gave the police officer additional filter papers to wrap over the folded pieces of filter papers containing the fingernail scrapings.

[30] Inspector Mohd Faisal bin Hj Lamat ('Inspector Faisal') testified that Dr Telesinghe placed the fingernail scrapings of Maual and Seniwati on small white pieces of 'round paper' which were folded into small 'square shaped' packages and handed over to him. He wrote down the following particulars on the two packages containing Maual's fingernail scrapings: (1) 'Right nail scraping 18 December 2004 @ 0923 Hr'; (2) 'Left hand nail scraping'.

[31] In relation to the two packages containing Seniwati's fingernail scrapings, he made these notes: (I) 'Right-hand nail scrapings 18 December 2004 @ 1046 Hr (woman)'; and (2) 'Left-hand nail scrapping 18 December 2004 @ 1048 Hr (woman)'.

[32] Corporal Hosaine said he received the four packages of nail scrapings from Inspector Faisal at the mortuary and he put them in four separate envelopes. These envelopes were not sealed. He took the four envelopes back to the SIU and informed ASP Sabtu about them and was told to keep them in the safety box. He labelled them with pieces of 'post-it' notepaper which were eventually replaced with white labels.

[33] ASP Sabtu gave evidence that he did not go to the mortuary on the day of the post mortem of the victims. He said he and other SIU officers went to the crime scene to look for the murder weapon from 10.45am to 12.15pm. Nothing was found. He returned to the crime scene with the Deputy Director of Criminal Investigation at 2.20pm to carry out a further search and left at 4.10pm with some documents.

[34] He met Corporal Hosaine in the SIU office at 4.35pm and was shown the four envelopes containing the nail scrapings of Maual and Seniwati. He ordered Corporal Hosaine to open the envelopes as he wanted to see the contents. He thought there might be some written notes on the exhibits. He was concerned the nail scrapings might fall out of the folded papers but was assured the contents were safe when he observed they were tightly folded. He told Corporal Hosaine to seal the envelopes. He agreed that the record in his diary did not show that he ordered the envelopes to be sealed but rather that they be kept in a safe place. He admitted that each envelope was opened, the folded paper inside it taken out and then put back in

the envelope. He denied that when the folded papers were opened the dried particles fell out and were replaced with stains.

THE NISSAN SUNNY

[35] It is not in dispute that the defendant is the owner of the Nissan Cefiro KG9494 whilst the Nissan Sunny BN8908 is owned by Lim Siew Yen ('Mrs Lim') who is the defendant's wife. ASP Sabtu gave evidence that on 20 December 2004 at 9.30am he and other SIU officers went to the crime scene to search the area outside the house for the murder weapon. Nothing was found and he left at 12 noon. He returned to the crime scene at 12.10pm with other SIU officers to carry out a further search which ended at 5pm. He arrived at the SIU office at 5.45pm and saw the Nissan Sunny parked outside. He was instructed by Senior Superintendent Pg Hj Wahab to go to the defendant's flat to tell his wife to bring the Nissan Cefiro to the SIU.

[36] He saw Corporal Hosaine search the Nissan Cefiro at 6.45pm. A baseball bat, rattan and two pieces of barbecue rods were found in the boot of the car. The search ended at 6.58pm. Next, at about 7.22pm, he saw Corporal Hosaine search the Nissan Sunny in the defendant's presence at the car park. Nothing was found. At 7.45pm he was instructed by Senior Superintendent Pg Hj Wahab to detain the Nissan Sunny. He told Corporal Hosaine to lock the door of the car. Corporal Hosaine kept the car key in the safe. Only the boot of the two cars were searched. The interior of the cars were not searched.

[37] The next day, at 2.08 pm, in the garage of the SIU, he told Corporal Hosaine to unlock the doors of the Nissan Sunny. The car was then examined by two forensic officers of the Department of Scientific Services, namely Cheong Poh Yee (Ms Cheong) and Paul Liew. On 22 December 2004 at 9.35 am the defendant surrendered the Nissan Cefiro to Corporal Hosaine and the Nissan Sunny was returned to him.

[38] In cross-examination ASP Sabtu disagreed that he had given instructions to a member of the SIU to drive the Nissan Sunny from the driveway into the garage of the SIU on the evening of 20 December 2004 at 6.45 pm as recorded in his diary. He said he had made a mistake in recording this. The car concerned was the Nissan Cefiro KG9494. The defendant himself drove the Nissan Sunny from the driveway to the garage.

[39] He agreed that entry 82 in his investigation diary stated as follows: 'Completed conducting search on the inside and outside of car BN 8908 Nissan Sunny but no evidence found.' He also agreed that he and Corporal Hosaine had searched the car. He said the search was restricted to the boot of the car because the inside of the car was to be examined by forensic officers the next day. The purpose of the search was to look for the murder weapon.

[40] Corporal Hosaine corroborated ASP Sabtu's evidence that the search of both the Nissan Sunny and Nissan Cefiro on 20 December 2004 was limited to the boot

of the vehicles. It was his evidence that on the next day the driver's car seat cover and door, panel were removed from the Nissan Sunny after Ms Cheong indicated there were traces of blood on these items and he kept them as exhibits.

FORENSIC REPORT ON THE NISSAN SUNNY

[41] Ms Cheong's evidence was that the Nissan Sunny was examined by her at the garage of the SIU on 21 December 2004 using Leucomalachite Green Reagent ('LMG') blood screening method. She stated in her report that the following traces of stains were found:

(a) A trace of stain (approximate area of 1 cm x 1.5 cm) on the inside door panel of the driver seat near the grip hole. The stain was examined and found to have trace of substance presumptive to be blood.

(b) A tiny spot of stain (approximate 0.1 cm) on the same side of the door panel near the window control switch. The spot was examined and found to have trace of substance presumptive to be blood.

(c) A smear of stain (approximate area of 2 cm x 2 cm) on the lower right side of the driver seat. The smear was examined and found to have trace of substance presumptive to be blood.

She explained that she was unable to say conclusively that the stains were blood stains since the LMG test used was a screening test and non-specific. The Nissan Cefiro was also examined for stains using the LMG method. None was found.

DNA EVIDENCE

[42] Various exhibits were taken to the Singapore Centre for Forensic Science ('SCFS') (the Singapore laboratory) for DNA analysis. Blood samples were collected from Maual and Seniwati, and the defendant, for use as reference samples. Expert evidence was given on behalf of the prosecution by two scientific officers qualified in the field of DNA profiling. The first was Ang Hwee Chen ('Ms Ang') of the SCFS. She has been a scientific officer in the DNA Profiling Laboratory of the SCFS since 2001. She has carried out examination and prepared reports in over 250 criminal and 150 commercial cases. The SCFS is accredited by the American Society of Crime Laboratory Directors ('ASCLD'). Standards and quality assurance are set by the ASCLD. Internal and external audits of the laboratory are carried out annually.

[43] Ms Ang gave an explanation of the technicalities and process of DNA profiling. We do not propose to go into the details. DNA profiling is, in the words of Ms Ang, like DNA fingerprinting and an individual will have a unique DNA profile except for identical twins. Measures are taken in the laboratory to avoid contamination of exhibits. All laboratory technicians have to follow guidelines. Masks, gloves and coats are worn during screening. Only one exhibit is opened at any one time. The work bench has to be cleaned thoroughly before and after screening each exhibit.

[44] According to Ms Ang she received and examined numerous exhibits from the Brunei police on four separate occasions: six exhibits on 30 December 2004; 46 exhibits on 12 January 2005; 30 exhibits on 25 January 2005; and 17 exhibits on 15 April 2005. She then prepared four reports of her findings. The exhibits were kept in sealed envelopes. It is unnecessary to mention all the exhibits that Ms Ang examined. Of significance are the following:

(a) blood samples of Maual, Seniwati and the defendant;

(b) a pair of blood stained gloves (E19 and E20) found at crime scene;

(c) the driver's door inside control panel of the Nissan Sunny which was found to have a trace amount of stain but it was insufficient to confirm it as blood;

(d) the driver's car seat cover of the Nissan Sunny which was found to have a trace amount of stain but it was insufficient to confirm it as blood;

(e) fingernail scrapings from Maual's right hand;

(f) fingernail scrapings from Maual's left hand;

(g) fingernail scrapings from Seniwati's right hand; and

(h) fingernail scrapings from Seniwati's left hand.

The results of the DNA analysis by Ms Ang concerning the abovementioned exhibits are as follows:

(a) The DNA profiles of the bloodstains on both of the gloves (area 1 and 2) were found to match the DNA profile of Seniwati.

(b) The DNA profile of the bloodstain on one of the gloves (E19) at area 3 was found to be a mixed DNA profile, comprising of a major component and a minor component consistent with having originated from Seniwati and Maual respectively.

(c) An attempt was made to generate a DNA profile from the stain on the driver's door inside control panel of the Nissan Sunny but none was obtained.

(d) The DNA profile of the stain on the car seat cover of the Nissan Sunny was found to be a mixed DNA profile comprising of a major component and a minor component consistent with having originated from Seniwati and at least two unknown persons respectively. The defendant and his son Renald Chia could be 'possible contributors' to the minor component.

(e) The DNA profile of the fingernail scrapings from Maual's right hand was found to be a mixed DNA profile comprising of a major component and a minor component consistent with having originated from himself and from the defendant respectively.

(f) The DNA profile of the fingernail scrapings from Maual's left hand matched his own DNA profile.

(g) The DNA profile of the fingernail scrapings from Seniwati's right hand was found to be a mixed DNA profile consistent with having originated from herself as a major component, the defendant and Maual as minor components, respectively.

(h) The DNA profile of the fingernail scrapings from Seniwati's left hand matched her own DNA profile.

[45] Next, there was evidence from Andrew David Parry ('Mr Parry') who is a Registered Forensic Practioner with the Forensic Science Service, Chepstow Laboratory. He has an impressive resume. He joined the Chepstow Laboratory in 1987 and was initially trained in the examination of items for biological trace evidence such as blood, semen, saliva and hairs. He also examined items for cross transfer of textile fibres and conducted subsequent comparison tests.

[46] Between 1988 and 1994 he worked in the newly formed DNA profiling unit at the Chepstow Laboratory where he analysed samples using the very first DNA profiling technique known as Multilocus Probe and Single Locus Probe DNA profiling analysis. During this period he was responsible for the day to day running of the unit, analysis of samples, the reporting of such evidence in the courts, and the training of staff within the laboratory and scientists from overseas in DNA profiling.

[47] In 1995 he became trained in the interpretation of STR DNA profiling analysis and since 2000 he has specialized in reporting the highly sensitive DNA profiling technique known as Low Copy Number DNA profiling analysis. He is an expert in the interpretation of bloodstain patterns and has attended in excess of 70 crime scenes involving homicide and suspicious death. In his career he has produced a vast number of expert reports for courts in the United Kingdom and for police forces overseas.

[48] Since Mr Parry's evidence is of crucial importance to the case for the prosecution we think it is useful to reproduce the pertinent parts of the three reports that he prepared in September 2005. The fourth report is of no assistance to the prosecution.

The first report states:

Information

I have received the following information from the Royal Brunei Police Force.

On the 17 December 2004 three people were found dead at their home address of C3 Banglo Maktab Sains Paduka, Seri Begawan Sultan, Kampong Serusop, Jalan Muara.

Maual bin Jambu was found in the garage, Seniwati bte Untong was found in a bedroom and their daughter Neena Asmira bte Aziz was found in the living room.

I understand that Maual Bin Jambu and Seniwati bte Untong had been beaten about the head. Seniwati bte Untong had also been strangled and Neena Asmira bte Aziz had been asphyxiated.

Purpose

I have received photographs and plans of the scene made by Police Officers from the Royal Brunei Police Force. I have been asked to examine the photographs and plans in an attempt

to shed light on the circumstances surrounding the deaths of the three individuals. In order to address this I have where possible commented upon the blood distribution patterns present at the scene.

It should be noted that I have not attended the scene and my comments are based purely on the photographs and other information I have received. Clearly attending the scene would provide the best attempt in determining the sequence of events.

Technical Issues

During an assault which results in injuries that bleed it is possible although not inevitable that blood will be transferred to nearby surfaces and the assailant. Such staining can arise in a number of ways eg, blood may *drip* onto a substrate from a wound; it may be smeared through direct *contact* with a wet bloodstained surface or it may be spattered as a consequence of a forceful impact. Blood may also be *spattered* as a consequence of other actions, such as coughing/sneezing of blood.

Blood may be projected from an object such as a bloody weapon. Blood may also spurt from a severed artery. The resulting bloodstains can leave characteristic patterns indicative of their deposition.

Scene Examination

From the photographs and other information I have received I have made the following comments:

In relation to the scene where Maual bin Jarrbu was found:

(a) The garage of the premises was open and inside was a white coloured motor vehicle (registration number BT 8689). Just outside the garage just behind this vehicle was another vehicle (registration number BQ 586) with the driver's door open.

(b) The male victim Maual bin Jambu was found lying, face up on the garage floor. The male was wearing a pair of shorts and a short sleeved shirt but his feet were bare.

(c) He was lying next to the rear off side door such that his feet were towards the garage entrance and his head towards the internal garage door that led into the house. His right arm extended underneath the vehicle and was close to a bloodstained brick that was next to the rear nearside wheel.

(d) There was a heavy pool of blood on the ground around the male's head, some of the blood had drained onto the ground underneath the rear nearside of the vehicle. Clearly the male had been lying in this position for some time while bleeding from his head. There were bloodstains visible down the front of his shirt suggesting that at some stage he had been in a more upright position allowing some blood to drip down the front of his shirt.

(e) There was a heavy pool of bloodstaining close to the male's left shin. It would appear that he has been on the ground in this area such that a bleeding wound has been in direct contact with this area of the garage floor. The bloodstaining has been smeared from the pool towards his left shin suggesting that something or more likely the male/or part of him moved or had been moved from the pool towards the area where he was found lying. There was also some similar smeared typed bloodstaining on the ground in front of the male's left hand.

(f) On the garage floor between where the male was lying and the nearside front wheel of the vehicle were numerous drips of blood and several areas of smeared blood. The drips indicated that the male had moved along the garage while dripping blood.

(g) There were some confact type bloodstains on the rear nearside passenger door panel indicating that something/someone had smeared blood on the door. On the driver's door panel were some downward splashes and some spurts of blood.

(h) Directly opposite the driver's door up against the garage wall was a table on its side. There was some heavy confact bloodstaining on the garage wall just above the top edge of the table, indicating that something stained with wet blood, possibly the male's bleeding head, had struck the wall. There were numerous apparent spatters and drops of blood low down on the table adjacent to the drips and smears of blood on the garage floor. In my opinion the presence of spattered bloodstains on the table indicates that there had been some violent activity in this area and suggests that there had been impacts into wet blood low down in front of the table. In my opinion the finding is compatible with the male having been beaten while low down in this area. (I note there appears to be footwear mark in blood on the garage floor adjacent to the table)

(i) Further into the garage, on the ground near the internal garage door were a few spots of blood and a pair of spectacles. Also the front offside wing mirror of the vehicle had been pushed out of its normal position towards the bonnet suggesting that a struggle may have occurred in this area. In my opinion the area near the internal garage door at the back of the garage may well have been the place where the male was initially assaulted.

(j) Just outside the entrance to the garage was a cardboard box that was heavily bloodstained. Clearly the male's bleeding injury had been in direct contact with the box and therefore at some stage it is likely that the box was further inside the garage.

In relation to the scene where Seniwati bte Untong was found:

(a) The victim was found lying face up on the bedroom floor with her head towards a sofa and her feet towards a bed on its side up against the wall.

(b) There was heavy bloodstaining on the floor beneath her head indicating that she had been lying in this position for some time while blood was draining from her head.

(c) The neck and shoulder areas of the garment she was wearing were heavily stained with blood and there was bloodstaining down the front. There was also smeared bloodstaining on the exposed areas of her legs and contact bloodstaining on her toes and the soles of her feet.

(d) There was a heavily bloodstained pillow underneath the left thigh. There appears to be bloodstaining on the unexposed area of the pillow underneath the thigh. Clearly the pillow could not have been underneath the thigh when this blood was deposited upon it. The amount of bloodstaining on this pillow suggests that the female had been bleeding onto this pillow for some time.

(e) The female's right hand was covered by a pillow. The right hand must have been exposed at some stage after she had begun to bleed and prior to the pillow covering it, as her right hand was bloodstained. On the upper surface of this pillow there appears to be numerous spots of blood and there was some contact bloodstaining and drops of blood towards one corner of the pillow.

(f) There was a heavily bloodstained pillow at one side of the female. It appears that at some stage the female has been lying with her bleeding head on this pillow.

(g) There was a large pool of blood on the floor between the foot of the bed on its side and the key on the floor at the side of the female, indicating that the female had been lying in this area such that her bleeding head had been in contact with the floor.

(h) There were heavy contact bloodstains on the base of the bed towards the head and halfway along the base indicating that something/someone stained heavily with wet blood had been in direct contact with these areas of the bed. Near this staining on the side of the base, suggesting that the bed was inclined at a sufficient angle to allow the blood to run down the side. On the floor, probably immediately below this staining was a blue and white check pattern sheet protruding from underneath the bed. There was some heavy bloodstaining on the sheet and on the floor next to the sheet.

(i) The bottom left leg of the bed appeared to be resting on top of the female's right ankle, suggesting that the bed may have been moved after the female was lying in the position found. However it is not possible to tell from the photographs whether or not there is a sufficient gap between the floor and the leg of the bed for the female's foot to have slipped underneath the leg.

(j) Low down just above the skirting board on the bedroom wall beneath the window where the head of the bed was up against was a small array of spattered bloodstains. The nature of the stains suggest that the blood had struck the wall almost perpendicular and from an event low down in front of the wall.

(k) I am unable to be specific about the action that caused the blood to be deposited but such actions include blood cast from a surface/object stained with wet blood or an impact/blow into wet blood.

In relation to the scene where Neena Asmira bte Aziz was found:

(a) The child was found lying face down on a pillow in the lounge.

(b) There was bloodstaining visible on the upper surface of the pillow, the heaviest bloodstaining was at one end of the upper surface of the pillow in the form of contact smears and drips of blood.

(c) There was some bloodstaining visible on the area of the pillow close to the child's head. There appeared to be some bloodstaining on the area of the pillow underneath her head.

(d) There was some bloodstaining on the child's clothing. I understand that DNA profiles obtained from the blood on the clothing and the pillow matched that of the female victim, Seniwati bte Untong.

Some other photographs submitted relating to the scene show two handbags with possible contact bloodstaining suggesting that someone with blood on their hands had handled these items. Two heavily bloodstained gloves were found at the scene indicating that an assailant had worn the gloves during the assaults and had discarded them on leaving the premises.

Interpretation and Conclusions

In my opinion:

(1) Mr Maual bin Jambu had been initially assaulted while he was near the internal garage door. He then moved back along the gap between the garage wall and the offside of the vehicle where he was subjected to a beating while low down in front of the table opposite the driver's door. He has then moved further along the garage while low down towards the entrance where he has bled for some time and then either moved himself or been dragged back to the position where he was found.

(2) The assault upon Seniwati bte Untong was confined to the area between the bed that was on its side up against the wall and the area where she was found lying.

(3) The presence of the spattered blood on the wall at the head of the bed and the heavy areas of contact bloodstaining along the base of the bed on its side suggest that she may have been initially assaulted towards the area of the head of the bed and had then moved along towards the foot of the bed.

(4) I would expect the assailant(s) to have become bloodstained as a consequence of these assaults and in particular lower garments such as trousers to have become bloodstained. It appears that the assailant(s) had handled two handbags at the scene and had been wearing gloves during the assaults.

(5) It is not possible to say from the photographs of the blood distributions to which I have access, as to whether or not Maual bin Jambu was assaulted before or after his wife.

(6) In my opinion the amount of bloodstaining on the pillow that Neena Asmira bte Aziz was lying on suggests that it was taken from the bedroom where the mother was found after the mother had bled on it.

(7) Furthermore the presence of bloodstaining attributable to the mother on the child's clothing suggests that the child was assaulted by someone who was already stained with the mother's blood and therefore it seems likely that the child was assaulted after the mother had been assaulted.

The second report states

Receipt of Items

On the 14 September 2005 I received at this laboratory, via the Birmingham Forensic Science Service Laboratory, Trident Court, DNA profiling results relating to the following samples:

V1.3 — right hand fingernail samples from Maual bin Jambu;

V1.4 — left hand fingernail samples from Maual bin Jambu;

V3.3 — right hand fingernail samples from Seniwati bte Untong;

V3.4 — left hand fingernail samples from Seniwati bte Untong;

S1.2.1 and S1.2.2 — sample from car seat cover;

S1.1 — sample from car window panel.

In addition I have received the results obtained from various reference samples including Maual bin Jambu, Seniwati bte Untong and Richard Chia Kok Hiong.

The analysis of these samples had been undertaken at the Health Sciences Authority, Singapore.

Purpose

I have been asked to examine the results obtained in an attempt to provide the following:

(1) A statistical assessment in relation to any matching profiles and to comment upon the evidential significance of the findings;

(2) Offer expert opinion as to how any biological material may have been transferred to the fingernail samples.

Examination and Results

I have examined the results of the DNA profiling tests undertaken.

Items relating to Maual bin Jambu

V1.3 — right hand fingernails

The result obtained indicated an uneven mixture of DNA from two people. The higher level, major DNA contribution matched the DNA profile of Maual bin Jambu. This finding is not unexpected as I would expect to find DNA from him given that the sample was taken from him.

The lower level minor DNA component present in the mixed profile matched that of Richard Chia Kok Hiong.

The mixture of DNA is what can be expected in a mixture of biological material from Maual bin Jambu and Richard Chia Kok Hiong. No DNA was detected that must have originated from some other unknown person.

In an attempt to undertake a statistical assessment in relation to the match to Richard Chia Kok Hiong I have undertaken a calculation using the DNA areas (loci) tested by scientists in Singapore that are also tested using the SGM plus DNA profiling test employed by the Forensic Science Service.

I have calculated that the probability of observing the DNA profile of the minor DNA component if it had originated from another unknown person unrelated to Richard Chia ICok Hiong is in the order of one in 2.3 million.

It should be noted that there are some DNA loci analysed by the Singapore tests that are not analysed by the Forensic Science Service which I cannot include in my calculation. The results at these loci also match that of Richard Chia Kok Hiong. Therefore the match probably figure I have quoted is a conservative estimate and the match is more significant than that which I have quoted.

In addition I note from the profiles received from the Singapore analysis that there are two other loci, which appear to be the D2 and D19 loci, that are not recorded in the table of DNA results in their statements. They also match the equivalent DNA elements in the profile of Richard Chia Kok Hiong. I have used these in my calculations.

In undertaking my calculation 1 have used a database relating to the population of the United Kingdom. However I would expect the result to be of the same order of magnitude if a Chinese, Malay or Indian population database were used.

V1.4 — left hand fingernails

The DNA profile matched that of Maual bin Jambu himself. No DNA from any other person was detected.

Items relating to Seniwati bte Untong

V3.3 — right hand fingernails

A mixture of DNA from at least three people was obtained from this sample. The indication was that the major DNA contribution matched the DNA profile of Seniwati bte Untong herself. Assuming the presence of her in the sample then the remaining minor DNA elements originated from at least two other people. All these remaining DNA elements can be accounted for by a mixture of DNA from Richard Chia Kok Hiong and Maual bin Jambu.

Such complex mixtures of DNA are problematical in undertaking a statistical assessment of the match. However in my opinion the finding is significant and what can be said is that the mixture of DNA detected is entirely compatible with a mixture of DNA from these three people and no DNA that must have originated from some unknown person was detected.

V3.4 — left hand fingernail samples

The DNA profile obtained from this sample matched that of Seniwati bte Untong.

Items relating to motor vehicle seized from Richard Chia Kok Hiong

S1.2 — bloodstaining from car seat cover

The DNA profile obtained from this sample indicated the presence of DNA from at least three people. All the DNA elements that comprise Seniwati bte Untong's profile are present in the mixed profile. Therefore she can be included as a possible contributor to the mixture of DNA. Both Maual bin Jambu and Richard Chia Kok Hiong can be included as possible contributors to the mixture of DNA. However if DNA from all three people are present then DNA from at least one unknown person must be present.

The complex nature of the profile precludes any meaningful statistical assessment.

S1.1 — bloodstaining from car window panel

It was reported that no DNA profile was obtained from this sample. I have examined the car window panel and have subjected some remaining bloodstaining to DNA profiling tests. The details and results of this work are the subject of a separate statement and a full assessment of the results in relation the samples from the vehicle is given in that report.

Interpretation and conclusions in relation to the DNA results obtained from the fingernails

In my opinion:

(a) the DNA profiling results provide extremely strong scientific evidence to support the assertion that there was DNA from Richard Chia Kok Hiong in the sample taken from underneath Maual bin Jambu's right hand fingernails.

(b) accepting that this DNA originates from Richard Chia Kok Hiong then the findings provide very strong scientific evidence that Maual bin Jambu had fingertip contact with Richard Chia Kok Hiong.

(c) such fingertip contact is very likely to have been relatively forceful such as gripping or scratching in order that the material was transferred underneath the fingernails.

(d) it is very unlikely that such material would be transferred underneath the fingernails if the two people in question had merely shook hands. Generally in shaking hands the primary contact is between the palm of the hands and the inner aspect of the fingers, not the tips of the fingers. I note from the photographs of the scene and postmortems that the fingernails of Maual bin Jambu did not seem particularly long such that it would not be simple to deposit biological material underneath them if shaking hands with someone. While it is known that some individuals shed well the DNA containing cells from the surface of their skin, the ability to detect such low levels of material for example during a contact such as shaking hands is dependent upon what the individual does after the contact. If there is the opportunity to touch surfaces and wash one's hands prior to sampling then this will clearly result in the loss of the DNA containing material.

(e) the mixture of DNA detected on Seniwati bte Untong's right hand fingernail samples is also compatible with her having had fingertip contact such as gripping/scratching with Richard Chia Kok Hiong. Also the findings in relation to this sample indicate that she may have also have had fingertip contact with her husband or something/someone heavily stained with his biological material. Given that they lived together then there clearly may be an innocent explanation as to why DNA attributable to her husband was present. Alternatively the presence of DNA relating to her husband on her fingernails could be that she had fingertip contact with an assailant who was stained with her husband's blood and she had gripped firmly/scratched areas of the assailant that were heavily stained with her husband's blood. The findings are what could be expected if Richard Chia Kok Hiong had been involved in a struggle with Maual bin Jambu and then his wife Seniwati bte Untong.

I have been asked whether or not it is possible to transfer detectable traces of DNA material beneath fingernails without causing any obvious marks to the body. In my opinion and from personal communications from colleagues who have done practical experiments involving scratching the surface of the skin with fingernails and subjecting them to DNA profiling tests it is quite conceivable for such material to be transferred to fingernails without observing any obvious visible damage to the skin, particularly to the casual observer or during an examination of that individual a few days after the incident.

The third report states:

Receipt of Items

On the 8 August 2005 58 items were received at the Birmingham Forensic Science Service Laboratory from the Royal Brunei Police. On the 15 August 2005 these items were transferred and received at this laboratory.

A On the 13 September 2005 reference samples relating to some of the individuals in this case together with other samples were similarly received at the Birmingham laboratory.

These items were transferred and received at this laboratory on the 14 September 2005.

B **Purpose**

I have been asked to examine a selection of items relating to the investigation into the deaths of Maual bin Jambu, Seniwati bte Untong and Neena Asmira bte Aziz.

C These items had previously been examined at the Health Services Authority, Singapore.

Examination and Results

I have examined the following items with the aid of scientific support staff acting upon my instructions. Macro record

D

Reference samples

V3.5 — bloodstain card relating to Seniwati bte Untong

E

V1.5 — bloodstain card relatinR to Maual bin Jambu

S1.7 — bloodstain card relating to Richard Chia Kok Hiong

F The DNA profiles of these individuals were determined from these samples.

Items relating to motor vehicle registration number BN8908

G S1.1 — part of window panel

This item appeared to be the panel that would surround the controls for electric windows on the door of a vehicle. There was a small amount of bloodstaining remaining on the panel in the area near where an adhesive label had been placed. Presumably this was the area of bloodstaining that had previously been identified and DNA tested with no result obtained.

H

The remaining bloodstaining was swabbed and submitted for standard DNA profiling tests. A partial DNA profile was obtained that matched that of Seniwati bte Untong.

The bloodstaining was then further examined using the more sensitive DNA profiling analysis technique known as Low Copy Number DNA profiling analysis.

I

The DNA profile obtained indicated the presence of a major contribution of DNA that matched the DNA profile of Seniwati bte Untong with a match probability in the order of one in 1 billion.

(The DNA element that indicates the presence of male DNA was detected at a low level together with a single DNA element not present in the profiles of Maual bin Jambu or Richard Chia Kok Hiong. I attach little if any significance to this single low level additional DNA element. I note this particular DNA element is observed in the DNA results I have seen relating to the following samples, BSB3,7,12,13,14,19,20, TT2,4,8).

S1.2 — Cover seat on the driver side from car registered BN89Q8

This was a grey, pink and blue car seat cover. There was a hole cut out of the fabric presumably where blood had previously been found. No bloodstaining remained on the item for further testing.

E19 — bloody glove

E20 — bloody glove

These were two white gloves with red stitching around the cuffs and could be worn as a pair.

Both gloves were saturated with blood on all surfaces, such that the wearer would have got traces of blood on their hands. There were holes cut out in various areas of the gloves presumably as a result of the initial examination of the item.

Attempts were made to sample relatively lesser bloodstained areas of the glove such as the wrists for the presence of DNA that may have been deposited by the wearer.

However only DNA matching that of Seniwati bte Untong and Maual bin Jambu was detected presumably from the bloodstaining present. The DNA relating to the female was at higher level than the male in the sample suggesting that there was more blood from her on the gloves.

Attempts to obtain a DNA profile from debris (containing possible cellular material) from inside one of the gloves was unsuccessful.

A short dark coloured hair was recovered from inside the glove E20 and this was also examined using standard DNA profiling analysis, but no profile was obtained. This sample is being examined using Low Copy Number DNA profiling analysis and the result will be the subject of a separate statement.

Conclusions

(1) The bloodstaining present on the panel seized from Richard Chia Kok Hiong's motor vehicle registration number BN8908 matched the DNA profile of Seniwati bte Untong with a match probability in the order of 1 in 1 billion.

(In calculating this figure I have used a UK population database and would expect the result to be of the same order of magnitude if a Chinese, Malay or Indian database was used.)

In my opinion this finding represents extremely strong scientific evidence to support the assertion that the staining originated from Seniwati bte Untong. Assuming that the

bloodstaining originated from her in my opinion the position of the staining is what can be expected if someone had got into the car with traces of her wet blood on their hands.

(2) Standard DNA profiling tests undertaken to date have not assisted in establishing who had worn the gloves. The relative proportions of the DNA detected suggested that the wearer had made more contact with surfaces stained with wet blood attributable to Seniwati bte Untong than Maual bin Jambu. The gloves were so saturated with blood that I would have expected the hands of the wearer of the gloves to have become bloodstained.

SHOEPRINTS IN THE GARAGE

[49] There was uncontroverted evidence that two shoeprints were found on the garage floor of C3. A bloody shoeprint was located above Maual's head. ASP Sabtu gave evidence that it was highly likely this shoeprint had been left by the assailant. The other shoeprint was near a folded wooden table resting on the wall. None of the defendant's shoes matched the two shoeprints found in the garage.

POLICE STATEMENTS

[50] The defendant gave four statements to the police: on 20 December 2004, 14 January 2005, 5 February 2005 and 15 February 2005. These statements are in general exculpatory in nature. The defendant denied any involvement in the deaths of Maual and Seniwati in his second statement.

[51] Furthermore, in his second statement and in the third and fourth statements, the defendant insisted that the last occasion when he saw Maual was on the morning of 15 December 2004 in the Boustead office. He added in his fourth statement that Maual was alone that day when he met him. That in essence is the case for the prosecution.

DEFENCE CASE

[52] The defendant is a car salesman with Boustead Sdn Bhd. He is aged 55. His wife is a retired school teacher. Their daughter, Serena, and son, Renald, are both in Australia. In his s 117B statement the defendant said he had known Maual and Seniwati since 1994. They were neighbours for about 10 years. Seniwati was also his wife's work colleague for some time.

[53] In October 2004 Maual and Seniwati met him at Boustead. They wanted to buy a Nissan Patrol vehicle. Upon his suggestion they decided to wait for a new model of the vehicle to arrive and Maual paid a booking fee of $500. The selling price of the vehicle was $60,000 and the deposit payable was $25,000. Maual wanted to transfer the registration number of his Mitsubishi Pajero to the new vehicle but did not have the registration book with him as he had misplaced it. Maual said he would look for it after his return from holiday in December.

[54] According to the defendant it was his habit to shake hands with those whom he met. On each occasion that he met Maual and Seniwati he shook hands with

them. He recounted meeting them on 18 October 2004 when he attended to them in the purchase of the Nissan Patrol; on 23 October 2004 when they visited Boustead to view other vehicles and asked for an official quotation; on three occasions possibly in early December 2004 when he went to Maual's house, the first to give him some vehicle catalogues, the second to give him a calendar and diary for 2005 and the third to discuss the purchase of the Nissan Patrol; and on 15 December 2004 when they came to Boustead to see him for a new quotation to arrange for financing as the previous one had expired.

[55] He attempted to call Maual's handphone on 17 December 2004 at 15:26 hours. Maual did not answer this call. He also used his handphone to send three messages to Maual's handphone on 16 December 2004 at 13:26 hours; 17 December 2004 at 08:49 hours; and 17 December 2004 at 15:33 hours. The messages concerned Maual's intended purchase of the Nissan Patrol.

[56] The defendant said that on the evening of 15 December 2004 at 7.15pm Teo Ah Hoon ('Mr Teo'), a family friend, came to his flat to invite him to attend a 'tahlil' ceremony at Pehin Zainuddin's house at the Police Headquarters in Gadong. Pehin Zainuddin was then the Deputy Commissioner of Police. He is now the Commissioner of Police.

[57] He drove to Pehin Zainuddin's house in his Nissan Cefiro accompanied by Mr Teo. Whilst at the house he phoned Jack Keasberry ('Mr Keasberry') asking him to go to Hj Morneh's restaurant later that night. He left Pehin Zainuddin's house with Mr. Teo at 10.30pm to return to his flat. Arriving at his flat at 10.45pm the defendant and Mr Teo had some wine. Mr Teo then drove his car back to his house at Jalan Muara and the defendant followed in his Nissan Cefiro. From there, they proceeded to Hj Morneh's restaurant in the defendant's car.

[58] They met Mr Keasberry at the restaurant and drank beer and there was karaoke. Hj Morneh, the owner of the restaurant, was present. They left the restaurant at 1.35am. He dropped Mr Teo off at his house and went home. The defendant said he was very sure he went to Hj Morneh's restaurant on the night of 15 December 2004 because they had left without paying the bill. He only paid on 18 December 2004 after being reminded by the waitress at the restaurant.

[59] On 20 December 2004 at about 4.50pm several police officers came to his place of work. He was asked to go to the Police Headquarters. He drove the Nissan Sunny which he had been using that day because he intended to renew the road tax. Corporal Yusran accompanied him in the car. He was told to park the car at the side of the driveway leading to the SIU. The car keys were taken away from him.

[60] Corporal Yusran took a statement from him in the SIU office. He was then questioned by several police officers before he was taken to the Anti Vice Unit where his Nissan Cefiro was parked. A number of police officers were searching the interior of the car including the boot. They found a rattan, two barbecue skewers and a baseball bat.

[61] After the search of the Nissan Cefiro he was brought to the driveway of the SIU where the Nissan Sunny was parked. His wife and two children were there. ASP Sabtu, Corporal Hosaine and another police officer searched the inside of the car and the boot. It was getting dark and ASP Sabtu or Corporal Hosaine used a torch light to carry out the search.

[62] ASP Sabtu then instructed a police officer to drive the Nissan Sunny to the garage of the SIU where there was lighting and the search continued there. A sports bag containing his son's swimming trunks and towel was found on the rear seat. After the search of the Nissan Sunny a police officer told him that they found traces of blood in the car and scientific officers would be asked to confirm this. He was questioned about this in his police statement on 14 January 2005 and was told that it was Maual's blood. The defendant asserted that he had no reason to kill the victims. He had no ill feelings towards them. He was a 'victim of circumstances' and a 'victim of very poor police investigations'.

WIFE'S EVIDENCE

[63] Mrs Lim corroborated her husband's evidence in essential details. She said that on 15 December 2004 her husband and Mr Teo went to Pehin Zainuddin's house at about 7.30pm. They returned to the flat at about 10.30 pm for a drink before going out again. She could not recall what her husband was wearing. But she remembered that he did not change his clothes when he arrived home. She was unable to recollect the time that her husband got home after the second outing. She said there was nothing unusual about his condition. He was his usual self.

[64] On 20 December 2004 she was with her son and daughter when the Nissan Sunny was searched at the driveway of the SIU. She saw police officers searching the inside of the car and also the boot with torch lights. The car was then driven into the garage of the SIU by a police officer because of poor lighting at the driveway. A sports bag belonging to her son was found in the car. In cross-examination Mrs Lim said she had known Seniwati for over 10 years. It was possible that when they were teachers of STPRI Seniwati had gone inside her Nissan Sunny to deliver oranges to her.

MAID'S EVIDENCE

[65] Trifona Cagantes, who has been a maid for the defendant and his family for 25 years, also confirmed seeing the defendant and Mr Teo going out together from the flat on 15 December 2004 after 7pm. She said Mr Teo visited the defendant again the next day at about the same time. Mr Teo came to the house three times in December 2004. She could not remember what the defendant was wearing on 15, 16 and 17 December 2004. She washed the family's clothes on those dates and did not notice anything strange. She did not see any trace of blood.

ALIBI EVIDENCE

[66] Mr Teo's evidence was that he had invited the defendant to go to Pehin Zainuddin's house for the 'tahlil' ceremony on the evening of 15 December 2004

because he wanted a companion. He corroborated the defendant's evidence as to what occurred that night. He said he remembered the date because it was the fourth 'tahlil' ceremony and there were not as many guests as on the previous night.

[67] We pause here to mention that the defence had at first applied to admit the police statement of Mr Teo pursuant to s 32(1)(i) of the Evidence Act on the ground that he could not be found.

Section 32(1) provides:

> Statements, written or verbal, of relevant facts made by a person who is dead or who cannot be found, or who has become incapable of giving evidence, or whose attendance cannot be procured without an amount of delay or expense which under the circumstances of the case appears to the court unreasonable, are themselves relevant facts in the following cases
>
> (i) when the statement was made in the course of, or for the purposes of, any investigation or inquiry into an offence under or by virtue of any written law; and such statement was made by a public officer in the discharge of his duties.

[68] Mr Siva, counsel for the defendant, relied on a decision of the Malaysian High Court in *Public Prosecutor v Mohamad Fairus bin Omar* [1997] 5 MLJ 57 which concerned the interpretation of paras (i) and (j) of s 32(1) of the Malaysian Evidence Act 1950.

[69] Section 32(1) of the Malaysian Evidence Act is in the same terms as ours except for sub-paragraphs (i) and (j).

Paragraph (i) states:

> When the statement was made in the course of, or for the purposes of, an investigation or inquiry into an offence under or by virtue of any written law; and.

Paragraph (j) states:

> where the statement was made by a public officer in the discharge of his duties.

KC Vohrah J in his judgment said:

> Sections 32 and 33 are exceptions to the general rule that hearsay evidence is not admissible. In respect of s 32, the circumstances under which a statement becomes admissible are set out in itemized paragraphs. And it will be noticed that for each set of circumstances, if there are criteria or conditions to be fulfilled they are spelt out in the same paragraphs. Similarly, it will be noted that each of newly-inserted paras (i) and (j) has the conditions set out. The conditions for the admissibility of a statement under para (i) are that it 'was made in the course of, or for the purposes of, an investigation or inquiry into an offence under or by virtue of any written law'; and for para (j) it must have been 'made by a police officer in the discharge of his duties'.

A He went on to say:

> Looked at from the point of view of the various paragraphs enumerated in s 32 before the section was amended, each of the paragraphs can be considered as spelling out a separate set of circumstances where a statement can be made admissible. Each paragraph can stand on its own.

B

[70] We entirely agree with those comments. So too, the sub-paragraphs in our s 32(1) should be similarly construed, each setting out separate requirements which must be complied with before a statement is admissible.

C

[71] The argument of Mr Siva, counsel for the defendant, as we understand it, was that by virtue of sub-para (i) a statement made by any person in the course of an investigation into an offence is admissible.

D **[72]** In our view that proposition is misconceived. The Mohammad Fairus case does not assist the defence at all. Our sub-para (i) is a combination of the Malaysian sub-paras (i) and (j). Reading our sub-para (i) as a whole, the conditions that must be met before a statement can be admitted are: (1) it was made in the course of an investigation into an offence; and (2) it was made by a public officer in the discharge of his duties. For those reasons we disallowed the application for the admission of
E Mr Teo's statement.

[73] Superintendent Hj Murad Bin Hj Abdul Hadi gave evidence that he attended the 'tahlil' ceremony in Pehin Zainuddin's house on several occasions in December 2004 and saw the defendant there. He recounted that on one occasion the defendant
F had stayed until about 10pm. The defendant's visit to Hj Morneh's restaurant with Mr Teo on the night of 15 December 2004 was also supported by evidence from Mr Keasberry and Rohayati, the daughter of Hj Morneh.

The Pajero

G

[74] Then there was evidence from Hj Jamil bin Hj Osman, the next door neighbour of Maual and his family, that on the evening of 16 December 2004 he noticed Maual's Mitsubishi Pajero was not parked at the garage. But on the next day when the bodies of Maual and his family were discovered he saw the Mitsubishi
H Pajero parked outside the garage.

Defence Experts

[75] Two expert witnesses were called on behalf of the defence. The first was
I Dr Brian Leslie McDonald ('Dr McDonald') who is a Consultant Molecular Geneticist from Australia working in the area of DNA testing for forensic and diagnostic matters. The second was Dr Ong Beng Beng ('Dr Ong') who is a Specialist Forensic Pathologist at the Queensland Health Scientific Services ('QHSS') in Brisbane. Dr Charles Naylor, the Chief Forensic Pathologist at QHSS, was not called but his report, which Dr Telesinghe had referred to, is similar to that of Dr Ong.

[76] Not surprisingly, Dr McDonald's expertise in the field of DNA was not challenged by the prosecution. He has 20 years experience in the testing, analysis and interpretation of DNA data. He has appeared as an expert witness in matters regarding DNA evidence in courts in most States of Australia and in the Singapore Supreme Court. He has established and directed laboratories in both public and commercial settings. His report is as follows:

(2) In the preparation of this report I have been provided with Police statements of the investigation, an autopsy report of the three deceased prepared by Dr. Telesinghe, three reports prepared by Ms Cheong Poh-Yee from the Department of Scientific Services Brunei, four reports prepared by Ms Ang Hwee Chen of Centre for Forensic Science, Singapore and three reports prepared by Mr Andrew Parry of the Forensic Science Service, United Kingdom. I have also had access to transcript of various parts of the court's proceedings.

(3) I have also been provided with genotyper profiles of testing conducted on the apparent blood stain from the Sunny motor vehicle item S1.2.1 and fingernail scrapings items V1.3 and V3.3. I have also been provided with details of reaction volumes for the standard Polymerase Chain Reaction (PCR) testing and DNA quantitation studies on these samples. In addition I have been provided with results of Low Copy Number (LCN) testing performed by the Forensic Science Service lab in the UK on sample S1.1 from the Sunny window panel. It is unclear whether this was the Chepstow lab where Mr Parry works or the Wetherby lab where development of this testing took place. It is not clearly stated. Mr Parry has also tested several items by standard PCR testing including the gloves item E19 and E20. Mr Parry did not appear to test the fingernail samples but offered an opinion on the Singapore results.

(4) The case involves the murder of a man, his wife and adopted daughter on the night of the 15 December 2004 or early morning 16 December 2004. The bodies were discovered on the 17 December 2004. A large number of samples were taken and tested initially by a presumptive test for blood in Brunei and subsequently sent for DNA testing to Singapore and some subsequent testing of a selected number of samples was performed in the UK.

(5) Most samples tested were of a single source of DNA that in all cases was identified from reference samples. A number of samples demonstrated mixtures that in some cases appeared able to be explained in terms of contributors and in others it was not.

(6) The gloves E19 and E20 were found on the first day of police investigation at the scene and were transported to Singapore with the item V1.2 the car seat cover from the Sunny motor vehicle.

(7) The predominant profile seen in several areas taken from each glove was the same as the deceased wife. In area 3 of glove E19 there was evidence of male DNA and minor alleles consistent with being from the deceased husband at all loci. There was also evidence of minor alleles at two loci plus the male locus amelogenin Y that may also be the deceased man. This is consistent with the findings reported by Ms Ang Hwee Chen and in a less precise way by Mr Parry.

(8) The glove E20 also demonstrated minor alleles at loci in areas 2 and 3. These were not mentioned other than being recorded in the table of Ms Ang Hwee Cheng's report dated 1 February 2005 p 33. In area 3, No Y was reported but an allele 10 at the D8 locus clearly indicates it cannot be the deceased husband. Another allele 7 at THO1 is found in the deceased husband but he is unlikely to be the source. It is also unlikely to be contributed by the deceased daughter who does have a D8 10 allele but does not have others present. I have not seen the raw genotyper data for this sample but the findings would suggest they are very weak minor alleles. No mention is made of any

identification of 'extra' alleles in Mr Parry's report for this item suggesting a difference between the Singapore lab and Mr Parry's lab.

(9) Whilst these alleles are undoubtedly weak, they may be the only DNA found of the actual attacker in this matter and should not be ignored. See also item S1.1 below where Mr Parry again ignores the presence of 'extra DNA present in that sample.

(10) Nissan Sunny car seat cover item S1.2 accompanied the gloves to Singapore. The item is from an apparent blood stain from a car seat cover. The confirmation as blood could not be made in the lab. The car is owned by Mr Richard Chia's wife. The sample demonstrated NO DNA when measured in the lab meaning, I presume, that the amount of DNA was below the threshold for the DNA quantitation system used in the lab. I do not have information regarding what method is used.

(11) This item was tested four times. As a consequence of a probable low amount of DNA in the sample, the first test 6 January 2005 was conducted with the maximum amount of DNA 10 microlitres (uL) added to the amplification step (as recommended by the manufacturer). No result was obtained. Four days later 10 January 2005, the sample was re run with half of the previous amount of DNA added 5 uL. The result is spectacular. The sample is a mixture of at least four persons. A full profile of at least two contributors at all 15 loci is present. At least one locus produced a peak above the maximum threshold for the analyzer.

(12) The predominant contributor is consistent with being the deceased wife as reported by Ms Ang Hwee Chen and Mr Parry. Ms Ang is more conservative quoting the deceased wife plus 'unknowns' however Mr Parry proffers that the deceased husband and Mr Chia are 'included' as possible contributors with still further alleles not accounted for. Whilst it is true neither man is excluded the evidence is weak for both and more marginal for the deceased husband. IF both were present, they would have to be in a lesser contribution than at least three other contributors. Mr Parry did not test this item himself but commented on results produced in Singapore. A large number of people from the general population would also not be excluded as contributors to this mixture.

(13) The son of Mr. Chia, Renald, has the strongest evidence to be a contributor. IF he is a contributor then his DNA would be about half of that of the deceased wife, IF she was a contributor. There are still alleles not accounted for in this mixture. As the reference sample for Renald was only partial, some loci may be further clarified with a complete profile.

(14) The sample was retested a third time with the same, amount of DNA 5uL, three days later 13 January 2005 however this time, results were obtained for only nine of the 15 smaller loci. I am not familiar with any other changes to this test in terms of cycle numbers or injection times that may shed some light on this result. The appearance is one that may be seen with the presence of inhibitors or degraded DNA however other tests of this sample indicate neither to be a realistic explanation.

(15) The fourth test was run six days later on the 19 January 2005 with half the amount of DNA again 2.5uL and produced results comparable with the spectacular results of the 10 January 2005 and dramatically better than the 13 January 2005. Again, this produced a full profile of at least the deceased wife and Renald IF both were contributors.

(16) These types of results are totally inconsistent with a sample that failed to demonstrate any DNA when it was quanthated yet produced results consistent with a relatively large amount of good quality DNA. The results are more consistent or, in a number of cases, better than reference samples, including that of Renald that failed to produce a result at four loci providing only a partial profile.

(17) Reported validation studies suggest a minimum amount of DNA of 0.125 nanograms (ng) of DNA is necessary to obtain a full profile from reference samples using cutoff reporting levels lower than used by the Singapore lab (60 vs 100 rfu's). The amount of DNA present, based on a failure to measure any DNA in the quantitation step would have to be much less than 0.125 ng in this case suggesting DNA from another source or sources is being detected in the final results demonstrating full profiles.

(18) This discrepancy may be due to contamination of DNA extracts at the time of quantitation or some time before subsequent amplification. Alternately some problem has occurred with the quantitation stage of the testing.

(19) Mr Parry has indicated 300 cells represent the lower level of detection; this would contain approximately 0.35ng of DNA considerably more than validation studies reported for the types of kits used by the Singapore lab. This may also explain a difference in the ability of the Singapore lab to identify minor components in the glove item more readily than Mr Parry with both using a standard PCR method.

(20) The finding of DNA from Renald or any person frequenting the Nissan Sunny is perhaps not unusual. The finding of DNA from the deceased wife, particularly IF it was from blood which is not confirmed by testing, would not be usually expected unless the deceased wife had also been inside the car. All results here, however, would be expected if there was contact between a source of the deceased DNA and or blood and the car. This testing cannot tell us how long any of the DNA that was detected was in the car, assuming no contamination of items after they were collected.

(21) This could occur at a number of times. Clearly the crime scene has large amounts of the deceased wife's blood which could readily be transferred from anyone attending the scene of the murders and subsequently examining the Nissan Sunny. A number of persons could fit these activities and it appears at least some person or persons from the investigation team have had contact wit blood and or items with blood on them at the scene.

(22) Alternately, items with blood from the scene, for example the gloves and the car seat exhibits may come into contact either directly or indirectly in the exhibit handling and storage area. Exhibits examined on the same surface without the surface being properly cleaned after each exhibit is examined, is a likely source of indirect contamination. The exhibits would not have to be examined at the same time. Minute invisible amounts of blood or other cells, wet or dry, would be sufficient. All of these possibilities exist before the items reached the laboratory.

(23) Within the laboratory, from the results, it is possible that contamination may have occurred after the quantitation and / or possibly after the first testing of the sample. No further quantitation was done before the second testing. Examination of the separation of sample testing and protocols within in the lab may shed some light on this issue.

(24) If any of these contamination events occurred in the process of this examination then any conclusions that Richard Chia transferred the DNA by direct contact, would be false. As the results stand, even disregarding the issue of possible contamination, there is no clear evidence that Richard Chia did transfer the DNA to the Nissan Sunny.

(25) The testing of Sunny window panel sample S1.1 was conducted using the LCN methodology. Mr Parry indicates that the deceased wife is not excluded as the donor, with which I would not disagree, however there is clearly other DNA present which Mr Parry appears ready to ignore. It is a 'minor' component but certainly Richard Chia does not possess this DNA type.

(26) Mr Parry identifies a number of persons tested, including Renald Chia, who have the same minor component but seems disinterested in the relevance of this finding. The most obvious relevance is that the minor component actually came from the person who transferred the deceased wife's blood from the crime scene to the Nissan Sunny. If in fact the stain is blood.

(27) The same transfer scenario described above (para 21), involving the same member of the investigation team, or others, which put the possible blood on the car seat S1.2 could also put this material on the window panel S1.1.

(28) It is clear Mr Parry in his conclusions is working on an assumption of complete sample integrity in terms of collection, handling and storage of the crime scene and exhibits and may be interpreting the evidence on the assumption that Richard Chia was the only person likely to be the means of transfer of the deceased blood from the crime scene to the car.

(29) The fingernail scraping samples all produced full profile of DNA. No mention is made at any point regarding the appearance of blood on these fingernails with the possible exception of the right little finger of the deceased husband, the end of which was detached from the hand presumably with the fingernail. It is not clear whether this nail was sampled but presumably not.

(30) The description by the Pathologist of the fingernail sampling and preparation involving placing retrieved particulate debris onto paper appears at odds with a description of the items as stains on paper when received by the Singapore lab. The envelopes into which the Pathologist claims, in his statement dated 18 December 2004, to have sealed with the paper with the fingernail scrapings taped to them, appears from subsequent testimony, to be incorrect and the items were not sealed prior to delivery to the exhibit officer. The potential for loss of particulate matter such as this following opening or partial unfolding is very high. It is unclear what became of the particulate matter from the fingernails which was placed in the folded paper. Further to this, contact of the paper with any item or surface on which other DNA was present would enable transfer to the paper which in turn would be at risk of being interpreted as having come from under the fingernails. It is also surprising the toothpicks used for the scrapings were not included with the debris as part of the evidence.

(31) The right hand scrapings of both deceased husband and wife contained full profiles of their own DNA. The husbands sample also contained a full profile, although in minor proportion, of DNA that is probably from Richard Chia. The sample from the wife again contained a full profile of her own DNA that was present in predominant proportions and full profiles of both her husband and Richard Chia with the latter being present in approximately twice the proportion as the husband's DNA IF they were all present. Both samples were tested twice with impressively reproducible results between runs in contrast to the previous sample S1.2.

(32) These findings again, are indicative of relatively large amounts of DNA, not the profiles of a sample that contained an amount of DNA below the threshold of detectability of the laboratory quantitation methodology. It is further surprising given that scrapings (in contrast to clippings) of fingernails is not the most efficient means of collecting samples for DNA analysis and that no blood was reported on the nails or hands by anyone involved in the examination of the nails or the scrapings.

(33) The finding of DNA under the fingernails of a person does not require, as suggested by Mr Parry and Dr Telesinghe, forceful scratching to achieve. The limited numbers of studies that have been conducted usually demonstrate DNA from subject's domestic partners under their fingernails without any forceful activity. This may explain DNA from the husband under his wife's fingernails and may explain that of Richard Chia's DNA.

(34) Whilst the shaking of hands with the husband may have deposited DNA from Richard Chia under the deceased husband's fingernails, it is unlikely, given the impressive results, that the DNA under the wife's fingernails was secondary transfer from her husband. If Richard Chia had also shaken hands with the wife it would be a more likely explanation. Again, no evidence is reported regarding any blood in the scrapings suggesting all the DNA is from skin or nail origin.

(35) The impressive final results from these items are not expected from a sample with no DNA measurable in the quantitation procedure in the lab. DNA consistent with passive transfer is usually found in relatively small quantities whereas the final results are more consistent with relatively large amounts of non degraded DNA, suggesting a possibility of contamination or at least inconsistent results for a sample which had no DNA measurable in it before amplification and analysis.

(36) I note that Richard Chia was a suspect at the time the samples were in the exhibit holding and may have had items containing the DNA in the exhibit area before they were sent to Singapore. It is surprising that the fingernail samples were not sent to Singapore at the same time as the reference samples from the deceased and the glove and car samples on the 30 December 2004.

(37) Also, DNA from Richard Chia was in the Singapore lab at the same time the fingernails were tested. Again examination of testing times and procedures for various samples may be useful to clarify this issue for these samples as well.

(38) All the results seen with the fingernails would be consistent with a contamination of a source of Richard Chia's DNA with the paper containing the scrapings items whilst in Police custody or after reaching the lab. Both locations had sources of Richard Chia's DNA also present.

(39) If contamination had occurred then any conclusion that Richard Chia had had direct contact with either of the deceased in order to transfer the DNA particularly in a violent manner, would be false. There is evidence, however, of some business contact between the two deceased and Richard Chia shortly before their deaths.

(40) All conclusions regarding the DNA evidence in this matter which has the effect of implicating Richard Chia K.ok Hiong relies absolutely on the correct collection, handling, storage and testing of the fingernail items and the items collected from the Nissan Sunny.

(41) Should the integrity of any of these steps be in doubt then any conclusions are also in doubt. The unexplained change in the integrity of the fingernail scrapings together with unsealed, accessible envelopes and inconsistencies with aspects of the DNA testing provide opportunity and indications that errors may have occurred with these items.

(42) The results of testing the car would also be completely explained by inadvertent transfer by crime scene investigators. At least some of who appear to have become contaminated and transferred blood and possibly other DNA material in and around the crime scene. This transfer may also have been away from the crime scene particularly if they were unaware of the presence of the blood or other material adhering to them or their clothes.

(43) Given the minute amounts of material required to produce the results obtained by the labs there exists a real possibility of contamination given the evidence in this case. An amount of blood the size of a full stop on this page (1 microlitre) will have approximately 10,000 cells in it (blood contains 7-14 million white cells / milliliter). The technology used by the lab can detect as an absolute minimum, in the order of 15-50 cells (Parry claims 300 cells). Based on this amount, a spot which is 1/1000 times the size of a full stop could yield an amplifiable amount of DNA.

[77] Dr Ong was a lecturer and subsequently an Associate Professor in forensic pathology in the Faculty of Medicine, University of Malaya, Kuala Lumpur from 1992 to 2002 before his present appointment. He has given evidence in court as an expert witness in forensic medicine and pathology in Malaysia, Singapore and Australia. His report states:

(2) I am asked to give my expert opinion regarding the time of deaths of the victims in the case of Richard Chia Kok Hiong who I understand is facing charges of murdering Maual bin Jambu, Neena Asmira binte Maual and Seniwati binte Untong.

(3) To make my opinion, I referred to my previous Statutory Declaration (annexed herewith and marked as 'OBB 1'), Statutory Declaration by Associate Professor Dr Charles Naylor (annexed herewith and marked as 'OBB 2') and the documents including a statement made by Specialist Pathologist, Dr PU Telesinghe made on 6 June 2005, post mortem reports of Maual bin Jambu, Seniwati bte Untong and Neena Asmira bte Maual, keys and photographs relating to the scene and post-mortem examinations and list of police exhibits. In addition, I had after the preparation of 'OBB 1' the opportunity to peruse the Notes of Evidence supplied by the Defence especially pertaining to evidence given by Dr Telesinghe and visited the scene of crime on 16 October 2006.

(4) To summarise the initial relevant findings regarding the time of death, Dr Telesinghe visited the scene of crime at around 2pm on 17 December 2004. He made the following observations and interpretation (with regards to time of death):

(a) Maual bin Jambu

The deceased was found in an open-air garage. The body showed signs of early putrefaction. In his evidence in court, he described that he observed greenish discolouration on the lower abdomen of the deceased during the post-mortem examination. Rigor mortis was complete (noted in post-mortem report) and described in Dr Telesinghe's oral evidence as present in both arms and legs. The time of death was estimated to be between 15 December, 2 pm and 16 December, 2am, ie, 36 to 48 hours earlier.

(b) Seniwati bte Untong

The body was found in an air-conditioned environment. The deceased, when compared to Maual bin Jambu was in a lesser state of putrefaction. According to his transcript of his evidence in court, he admitted that the deceased did not show any evidence of putrefaction. Rigor mortis was present (typographical error noted in post-mortem report). The rigor mortis was present (typographical error noted in post-mortem report). The rigor mortis was further clarified in his evidence in court where what was meant was that the rigor mortis was still setting and had not fully developed. The time of death was estimated to be between 15 December, 2pm and 16 December, 2am, ie, 36 to 48 hours earlier.

(c) Neena Asmira bte Maual

The body was found in an air-conditioned room. There were no signs of putrefaction. In the post-mortem report, it was stated that rigor mortis was present. The time of death was estimated to be between 15 December, 2pm to 16 December, 2am, ie, 36 to 48 hours earlier.

(5) To recapitulate Prof Naylor's earlier report to which I agree with, the estimation of time of death is based on certain post-mortem changes which have been previously documented. The main methods used in this case are as follows:

A. Lividity or hypotasis

Lividity is observed as a dark discolouration of the skin in dependent areas caused by pooling of blood due to the effects of gravity. Lividity occurs after death (usually around two hours) and reached its maximum intensity by 8 to 10 hours. Around the same time, lividity will become fixed, and therefore moving the body to another position will not result in redistribution of lividity. However, there is much variability with the time required for fixation of lividity and hence, cannot be used along to estimate the time of death. Lividity usually disappears with the commencement of decomposition.

B. Rigor mortis

This is a phenomenon where there is post-mortem stiffening of muscles. Rigor mortis typically appears two to four hours after death and fully develops by 6 to 12 hours. As a guide which was stated in my earlier report, the time required in the formation of rigor mortis as summarized from *Knight's Forensic Pathology*, 3rd Ed: Arnold 2004 is as follows:

(a) if the body feels warm and is flaccid, it has been dead less than 3 hours;

(b) if the body feels warm and is stiff, it has been dead from 3 to 8 hours;

(c) if the body feels cold and is stiff, it has been dead from 8 to 36 hours;

(d) if the body is flaccid, it has been dead more than 36 hours.

Two of the factors affecting rigor mortis which would be relevant in this case are environmental temperature and physical activity shortly before death.

The time quoted in the text above is for temperate countries. When the environmental temperature is higher as in a tropical country like Brunei, the process is hastened. In fact, in my experience in Malaysia where the environmental temperature is similar to Brunei, rigor mortis commences as early as one to two hours after death, present for the next 8–12 hours, starts to disappear from 12 hours before completely disappearing by 24 hours. I noted that two of the other victims were found in air-conditioned rooms/hall. There was no record of temperature in the air-conditioned room except to say that the room temperature where the victim no 3 (Seniwati bte Untong) was found to be much 'colder'.

Physical activity prior to death will raise the body temperature and deceases substances available to delay rigor mortis formation. Any physical activity will therefore hasten and shorten the duration of rigor mortis. From Dr Telesinghe's statement and subsequent post mortem reports, the deceased, Maual bin Jambu and Seniwati binte Untong had numerous injuries on them including defence injuries. In addition, Mr Maual appeared to be trying to escape from the assailant. This would be consistent with considerable physical activity prior to death and would result in hastening the formation and subsequent disappearance of rigor mortis.

No proper assessment of the degree of rigor mortis was described by Dr Telesinghe except to say that it was either present or complete initially. He eventually clarified in court that Maual bin Jarnbu's rigor mortis was only detected in both upper and lower limbs and Seniwati bte Untong's rigor mortis was only setting.

The presence of rigor mortis especially when complete would indicate that the time of death would not be more than 24 hours at the time of examination. Physical activity would hasten rigor mortis and its disappearance would have commenced after 24 hours and certainly would have disappeared by 36 hours.

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The body was found in an air-conditioned environment. The deceased, when compared to Maual bin Jambu was in a lesser state of putrefaction. According to his transcript of his evidence in court, he admitted that the deceased did not show any evidence of putrefaction. Rigor mortis was present (typographical error noted in post-mortem report). The rigor mortis was present (typographical error noted in post-mortem report). The rigor mortis was further clarified in his evidence in court where what was meant was that the rigor mortis was still setting and had not fully developed. The time of death was estimated to be between 15 December, 2pm and 16 December, 2am, ie, 36 to 48 hours earlier.

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The body was found in an air-conditioned room. There were no signs of putrefaction. In the post-mortem report, it was stated that rigor mortis was present. The time of death was estimated to be between 15 December, 2pm to 16 December, 2am, ie, 36 to 48 hours earlier.

(5) To recapitulate Prof Naylor's earlier report to which I agree with, the estimation of time of death is based on certain post-mortem changes which have been previously documented. The main methods used in this case are as follows:

A. Lividity or hypotasis

Lividity is observed as a dark discolouration of the skin in dependent areas caused by pooling of blood due to the effects of gravity. Lividity occurs after death (usually around two hours) and reached its maximum intensity by 8 to 10 hours. Around the same time, lividity will become fixed, and therefore moving the body to another position will not result in redistribution of lividity. However, there is much variability with the time required for fixation of lividity and hence, cannot be used along to estimate the time of death. Lividity usually disappears with the commencement of decomposition.

B. Rigor mortis

This is a phenomenon where there is post-mortem stiffening of muscles. Rigor mortis typically appears two to four hours after death and fully develops by 6 to 12 hours. As a guide which was stated in my earlier report, the time required in the formation of rigor mortis as summarized from *Knight's Forensic Pathology*, 3rd Ed: Arnold 2004 is as follows:

(a) if the body feels warm and is flaccid, it has been dead less than 3 hours;

(b) if the body feels warm and is stiff, it has been dead from 3 to 8 hours;

(c) if the body feels cold and is stiff, it has been dead from 8 to 36 hours;

(d) if the body is flaccid, it has been dead more than 36 hours.

Two of the factors affecting rigor mortis which would be relevant in this case are environmental temperature and physical activity shortly before death.

The time quoted in the text above is for temperate countries. When the environmental temperature is higher as in a tropical country like Brunei, the process is hastened. In fact, in my experience in Malaysia where the environmental temperature is similar to Brunei, rigor mortis commences as early as one to two hours after death, present for the next 8–12 hours, starts to disappear from 12 hours before completely disappearing by 24 hours. I noted that two of the other victims were found in air-conditioned rooms/hall. There was no record of temperature in the air-conditioned room except to say that the room temperature where the victim no 3 (Seniwati bte Untong) was found to be much 'colder'.

Physical activity prior to death will raise the body temperature and deceases substances available to delay rigor mortis formation. Any physical activity will therefore hasten and shorten the duration of rigor mortis. From Dr Telesinghe's statement and subsequent post mortem reports, the deceased, Maual bin Jambu and Seniwati binte Untong had numerous injuries on them including defence injuries. In addition, Mr Maual appeared to be trying to escape from the assailant. This would be consistent with considerable physical activity prior to death and would result in hastening the formation and subsequent disappearance of rigor mortis.

No proper assessment of the degree of rigor mortis was described by Dr Telesinghe except to say that it was either present or complete initially. He eventually clarified in court that Maual bin Jarnbu's rigor mortis was only detected in both upper and lower limbs and Seniwati bte Untong's rigor mortis was only setting.

The presence of rigor mortis especially when complete would indicate that the time of death would not be more than 24 hours at the time of examination. Physical activity would hasten rigor mortis and its disappearance would have commenced after 24 hours and certainly would have disappeared by 36 hours.

Going by the estimation of rigor mortis of Maual bin Jambu, a diminishing rigor mortis will be consistent with about 12 to 20 hours after death.

On the other hand, Seniwati's rigor mortis was assessed to be only commencing. Taking into account the air-conditioned environment, it would be consistent with 6 to 12 hours after death.

C. Decomposition

Decomposition is a process where there is progressive break down of the soft tissue of the body due to internal digestion (autolysis) and effects of bacterial infestation (putrefaction). The appearance of decomposition is variable but usually occurs in the following sequence and time as quoted by Rutty ' (Copy of Rutty GN Post mortem changes and artefacts. In *Essentials of autopsy practice*, Rutty GN (Ed). London: Springer, 2001 is annexed herewith and marked as 'OBB3') This is summarized as follows:

Days	Changes
1	Greenish discolour at ion of abdomen and flanks
2	Beginning of bloating
3 - 4	Venous nuirbling
5 - 6	Gaseous swelling, skin blebs and skin slippage

These observations were quoted by the author as occurring in temperate countries. My experience in Malaysia and also in Queensland during the spring and summer where the weather is similar to the tropics noted that these processes are accelerated. Greenish discolouration can be observed as soon as 12 hours with presence of bloating and venous marbling in 36 to 48 hours.

Dr Telesinghe had observed putrefaction in the two adults but had not described the changes. None of the features of decomposition could be observed in the photographs. Whilst the quality of these photographs was poor and subtle changes could have been obscured, no prominent changes of decomposition which could not be missed even in these photographs were observed. The absence of any obvious decomposition changes would have favoured death occurring sooner rather than later. Signs of bloating and marbling (which would be clearly observed even in these poor quality photographs) are expected to be observed by 36 to 48 hours in tropical climates.

Later, it was clarified that in Maual bin Jambu's case, greenish discolouration was observed in the right lower quadrant of the abdomen during the post-mortem examination. Decomposition would have continue to occur after the initial investigation at the scene of crime as it would have taken some time before the body was taken to be kept in the mortuary fridge after Dr Telesinghe's examination. In addition, it would have taken a few hours before the body was fully cooled in the fridge. Decomposition would have continued and hence, not surprising to see greenish discoloration on the abdomen during the post mortem examination. Greenish discolouration, even if observed at the scene would be consistent with death as early as 12 hours. The absence of other decomposition changes would be in favour of death not occurring after 24 hours from time of examination at the scene.

D. Arthropod infestation

The absence of any insect/larval infestation is also pertinent to the estimation of time of death. One of the earliest signs is deposition of eggs laid by blow flies. The presence of exposed wounds especially in the body of Maual bin Jambu would

[82] Equally important, we would add as a matter of commonsense, is the need for stringent measures to be adopted to safeguard the integrity of exhibits when they are collected, handled and stored prior to the items reaching the laboratory. A

[83] In the instant case it seems to us that the police officers involved in the investigations had little appreciation of the risks of contamination and no protocols existed in the collection, handling and storage of exhibits from the crime scene. There was evidence from Corporal Hosaine that he did not bring enough labels along with him and therefore the same labels were reused at various locations at the scene. B

[84] Dr Telesinghe said that close to 30 police officers went in and out of the victims' house while he was present and there did not appear to be any control of access to the crime scene. None of the police officers who entered the house appeared to have worn any protective apparel. C

[85] Corporal Hosaine also admitted that the exhibits collected from the crime scene were placed in envelopes which were not sealed and put in boxes. The envelopes which contained the fingernail scrapings of Maual and Seniwati were also not sealed before they were handed to him. There was evidence that ASP Sabtu had examined the folded papers containing the fingernail scrapings in the SIU office on the afternoon of 18 December 2004 after his visit to the crime scene. Envelopes were only sealed 'from time to time' by Corporal Hosaine on the instructions of ASP Sabtu before they were taken to the Singapore laboratory. D E

[86] No record was kept of the movement of exhibits into and out of the exhibit store where they were kept. Corporal Hosaine said he could not remember how many times the exhibits were viewed by police officers prior to examination by the Singapore laboratory. F

[87] We have difficulty accepting the evidence of ASP Sabtu and Corporal Hosaine that the search of the Nissan Sunny for the murder weapon on 20 December 2004 was confined to the boot of the car. That assertion was contradicted by the record in ASP Sabtu's diary that the 'inside and outside' of the Nissan Sunny had been searched. G

[88] The evidence of ASP Sabtu and Corporal Hosaine cannot be said to be of the highest calibre bearing in mind that on the latter's own admission, they had discussed the evidence to be given so that they would be consistent. We are inclined to accept the evidence of the defendant and his wife that the boot and the inside of the Nissan was searched by the police on the night of 20 December 2004. H

[89] ASP Sabtu agreed in cross-examination that he and Corporal Hosaine had conducted the search of the Nissan Sunny on 20 December 2004. The point to be made here is that ASP Sabtu and other members of the SIU had gone to the crime scene twice on that day to search for the murder weapon and on each occasion they spent hours there. The search of the Nissan Sunny by ASP Sabtu took place shortly after his second visit to the crime scene. I

A **[90]** Against that background we have to say that we have grave reservations about the integrity of the exhibits that were examined by the Singapore laboratory. Mr Parry, the prosecution DNA expert, in the course of his evidence referred to a set of protocols to prevent contamination in the collection of samples issued by the Forensic Science Service in England to police officers. We take this opportunity to
B suggest that police officers here be provided with similar guidelines if this has not already been done.

[91] In relation to the car seat cover and the door control panel of the Nissan Sunny we cannot rule out the possibility that contamination may have occurred
C through the inadvertent transfer by ASP Sabtu (or another police officer) when he searched the car after coming into contact with Seniwati's blood at the crime scene. Contamination of these two material exhibits could also have occurred during handling and storage by the police. The same observation would apply to the envelopes containing the fingernail scrapings of Maual and Seniwati.

D **[92]** We interpose here to say something about the suggestion by the defendant that the police had somehow planted evidence in the Nissan Sunny in order to incriminate him. We wish to make it clear that there is no substance whatever in this spurious and misguided allegation against the police. There is no evidence of any police conspiracy against the defendant.

E **[93]** Reverting to the issue of contamination, we have no doubt that strict standards to obviate error are in place in the Singapore laboratory. But we do not share the same degree confidence of the prosecution that contamination could not have happened. We do not think the prosecution has adequately addressed the issues
F of possible contamination or inconsistency in the results in the Singapore laboratory which Mr McDonald has raised in his report. We are therefore unable to rule out the possibility that the integrity of the laboratory findings may have been compromised in the manner which Mr McDonald has explained.

G **[94]** The opinions of the experts in regard to several material issues, such as the time of death of the victims, likelihood of transfer of the defendant's DNA to the victims' fingernail scrapings from merely shaking hands as opposed to forceful fingertip contact like gripping or scratching, and possible contamination of the car seat cover and door control panel of the Nissan Sunny by the transfer of dry blood rather than wet blood, are divided.

H **[95]** We are entitled to accept the opinion of one expert and reject that of another upon consideration of the evidence as a whole. This was made clear by Widgery LCJ in *R v Sodo* [1975] 61 CrAppR 131 when he said at pp 133–134:

I > Basic to the issues before us today is the proposition which one hears a great deal nowadays, namely, that if experts differ there must be a reasonable doubt in the jury's mind which will lead to an acquittal. This is heresy, and the more often it can be pointed to as heresy the better. To apply such a principle would be to have trial by expert instead of trial by jury. The truth of the matter is that juries are perfectly entitled when experts before them differ to decide, if they think fit, that one expert is telling them the right and proper answer and

the other is not, and if they reach such a conclusion beyond reasonable doubt it is proper for them to act on the opinion of one expert although that is contradicted by another expert.

[96] However, in the context of the present case, having considered the evidence in totality, we are not persuaded that the evidence of one expert is to be preferred over another. In our judgment the testimony of the experts called by both parties was on the whole competent and professional. We were particularly impressed with Dr Ong who gave his opinion on contentious issues in a fair and objective manner.

[97] We think the divergence in the views of the experts reflected the innate complexity of the issues involved and none of them was able to say that the opinion proffered by the other could be ruled out definitively. In the circumstances any doubt in the issues alluded to earlier must be resolved in the defendant's favour.

[98] Turning to the evidence of Faridah, we have serious concerns about the reliability of her account of what she saw on the night of 15 December 2004. Having said in evidence-in-chief that the man she observed coming out of the Nissan Sunny was the defendant, she conceded in cross-examination that she had assumed it was him because of the car.

[99] We find it disturbing that the police statement of such an important witness was only recorded over three weeks after she had made a report. We do not accept the explanation of ASP Sabtu that this delay was due to reluctance of the witness to make a statement. No evidence was adduced by the prosecution as to what the witness had initially told the police.

[100] Leaving aside the issue of the identity of the man whom Faridah said she saw, if her evidence that the man she observed had bloodstains on his trousers is accepted, the inference must be that he had just killed the victims that night. But this evidence cannot be reconciled with that of Haliza (she told the police she heard a scream which she believed was from Seniwati on the morning of 16 December 2004) and Hj Jamil (he noticed that MauaKs Pajero was not at the garage on the evening of 16 December 2004 but was there the next day), which suggests that at least one of the adult victims was alive on 16 December 2004, unless these two witnesses were mistaken. Furthermore, if what Solihun said in his two police statements is accurate, all three victims were alive on the afternoon of 16 December 2004.

[101] The prosecution has not been able to show any motive for the murders. It is true, of course, that the prosecution does not have to establish any motive and that crimes may be committed for no apparent reason. The motive may be known only to the accused himself. But as was pointed out by Roberts CJ in *Public Prosecutor v Kapli bin Masri* [1990] JCBD 216 at p 218:

If, however, the prosecution is able to establish a motive this is often of assistance in coming to the conclusion as to the strength of the circumstantial evidence against the accused.

[102] Bearing in mind the opinion of Mr Parry that he would 'expect the assailant(s) to have become bloodstained as a consequence of the assaults on Maual and Seniwati', and that the 'gloves were so saturated with blood' he 'would have expected the hands of the wearer of the gloves to have become bloodstained' and the amount of blood found at the crime scene, on the assumption that the assailant had driven the Nissan Sunny at the time, we find it surprising that no evidence of blood was found in the car albeit there was substance presumptive of blood. Moreover, no forensic evidence was found at the victims' house linking the defendant to the crime scene. Nor was there any forensic evidence found at the defendant's flat linking him to the victims and the crime scene.

[103] Considered cumulatively, the uncertainty in the evidence relating to the time of death of the victims, unreliability in the testimony of Faridah, possibility of contamination of the exhibits leading to the questionable integrity of the DNA findings, the possibility that the defendant's DNA may have been deposited under the victims' fingernails from shaking hands, the mysterious shoeprints in the garage and the alibi defence which on the whole was unshaken, we are not satisfied the prosecution has established the case against the defendant to the requisite standard of proof.

Accused acquitted of murder.

Reported by Sally Kee